

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

MARCUS EDWARD PHILLIPS, AS
ADMINISTRATOR OF THE ESTATE
OF SUSIE LUCILLE PHILLIPS,
DECEASED,
PLAINTIFF,

VS.

THE CITY OF OPP, ALABAMA,
AN ALABAMA MUNICIPAL
CORPORATION; JASON C. BLUE;
DAVID HARRELL; AND BILL SHAW,
DEFENDANTS.

CASE NO. 2:05cv934-T

RESPONSE TO DEFENDANTS' MOTION TO DISMISS,
TO STRIKE, AND TO LIMIT DISCOVERY

Comes now the Plaintiff and files his response to the Defendants' MOTION TO DISMISS, TO STRIKE, AND TO LIMIT DISCOVERY.

1. STATUTE OF LIMITATIONS: Defendants contend that Plaintiff's actions are barred by a two year statute of limitations.

As stated in Plaintiff's complaint, and to the best of the Plaintiff's knowledge, information and belief, Susie Lucille Phillips (Phillips) was killed by Marcellous Evans (Evans) between the dates of February 21-24, 2003. The instant action was filed September 30, 2005.

Evans confessed to the murder of Phillips and disclosed the location of Phillips' body/remains to the authorities on March 30, 2005. The Plaintiff asserts that the applicable statute of limitations is equitably tolled in that the Plaintiff could not have known of the existence of a cause of action until Evans confession i.e. more than two years and one month after Phillips disappeared. See, e.g. McIntire v. United States, 884 F.Supp. 1529 (M.D.Ala.1995). The Plaintiff filed his complaint within six (6) months of the date of Evans confession.

2. The balance of Defendants' motion raises various defenses, certain assertions of facts (i.e. denials), and issues of law that Plaintiff asserts are the proper subject matter

of a motion for summary judgment rather than a 12(b) or 12(f) motion. The Plaintiff asserts that he has properly stated cognizable causes of actions. The viability *vel non* of same are subject to proper motion after the parties' have had an opportunity to conduct discovery in the event the court determines the Plaintiff is not time barred.



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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he has this 9th day of November 2005 mailed a copy of the foregoing pleading to the attorneys of record for all other parties in this action by placing same properly addressed in the U.S. Mail with sufficient postage to insure delivery.

